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November 21, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Via Electronic Filing

Re: MB Docket 09-182, 2010 Quadrennial Review –Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; MB Docket 07-294, Promoting Diversification of Ownership in the Broadcasting Services; MB Docket No. 12-268, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

Dear Ms. Dortch:

On November 19, 2012, Matt Wood, Andy Schwartzman, and Lauren Wilson of Free Press; Angela Campbell and Laura Moy of the Institute for Public Representation (“IPR”); Todd O’Boyle of Common Cause; Michael Scurato of The National Hispanic Media Coalition; and Cheryl Leanza representing the United Church of Christ, Office of Communication Inc. met with Alex Hoehn-Saric, Policy Director for Commissioner Rosenworcel and Dave Grimaldi, Chief of Staff for Commissioner Clyburn. The subject of the meeting was the Commission’s Quadrennial Media Ownership Review and the continuing need to assess broadcast ownership levels among women and people of color carefully and thoughtfully before releasing a final order.

We began by stressing that the Commission must act on a basis of a record containing comprehensive data about broadcast ownership. One of the bases that the Third Circuit Court of Appeals cited for reversing the Commission’s last quadrennial review order was the agency’s failure to consider the impact of that action on ownership by women and people of color. The second basis for reversal was that the Commission denied the public a meaningful opportunity to comment on material that was placed in the record at the last minute.¹ Thus, we urged the Commission not to rush to judgment and suggested instead that it fully consider how any and all rule changes might impact diverse ownership. Moreover, we emphasized that the thorough consideration required by the Third Circuit could only be achieved after the public has been given an opportunity to comment on the Commission’s Report on Ownership of Commercial Broadcast Stations released on November 14, 2012.²

¹ *Prometheus Radio Project v. FCC*, 652 F.3d 431, 472 (3d Cir. 2011) (“*Prometheus IP*”) (“As ownership diversity is

² 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket Nos. 07-294 and 09-182, Report on Ownership of Commercial Broadcast Stations (2012).

We also addressed the need to ensure that members of the public receive meaningful notice whenever a broadcaster seeks waiver of an ownership rule.³ Currently, the public has two methods of discovering when such applications are filed. First, stations are required to announce the fact of filing on air. Second, the Commission issues a list of applications accepted for filing in its daily release. However, neither type of notice includes information about whether a waiver has been requested. Public notice is especially important in such cases, especially if the Commission were to adopt a rebuttable presumption that certain newspaper-television waivers are in the public interest. Without meaningful notice, the public has no opportunity to rebut this presumption. When a party requests a waiver of rules under consideration in this proceeding, whether those rules are changed or not, the Commission should issue a specific public notice. It should distribute information about the waiver request in a manner that gives people in the relevant community of license a chance to learn of the waiver request and offer comment on it.

We next discussed the impact relaxation of cross-ownership rules would have on diverse communities and emphasized that there is no plausible way to divorce decreases in diversity from increased consolidation. Recently released Form 323 data showed that people of color and women remain dismally underrepresented in the media marketplace. As Free Press pointed out in our March 2012 comments on the *2010 Review*, allowing increased media consolidation almost certainly would have an adverse effect on ownership levels among women and people of color. The data show that the level of consolidation in broadcast markets correlates with the level of diverse ownership, and that relaxation of ownership rules leads to loss of diverse ownership in those markets.⁴

In those comments, Free Press detailed its findings regarding the impacts on diversity of two earlier changes in broadcast ownership laws and rules: Congress's decision in 1996 to increase the national television ownership cap from 25 percent to 35 percent; and the FCC's decision in 1999 to permit local television duopolies. We identified seventeen stations that were sold to "non-minority" owners after those policy changes were enacted, and noted that nine of these seventeen transactions would not have been permitted under the prior rules. With respect to separate data on diversity among radio licensees, Free Press analysis demonstrated that female- and minority-owned stations thrive in markets that are less concentrated, but that chances for diversity of ownership are significantly lower in concentrated markets.⁵ These past trends allow us to reasonably predict what will happen if the Commission moves forward with its proposed rule changes. If, as has been reported in the trade press, the FCC repeals both the radio-television and radio-newspaper broadcast ownership rules, then the already small number of radio stations owned by minorities and women will be subject to acquisition from in-market stations and papers, thus decreasing diversity and competition and making new entry more difficult.

³ This concern is addressed in detail in the Comments of Media Access Project and Prometheus Radio Project, MB Dockets 09-182, 07-294 (filed Mar. 5, 2012).

⁴ See Comments of Free Press, MB Dockets 09-182, 07-294 (filed Mar. 5, 2012), at section I(A)(2).

⁵ *Id.*

Furthermore, an analysis of current Form 323 data also showed that relaxing the newspaper broadcast cross-ownership rule (“NBCO”), specifically for newspaper-television combinations, is once again likely to decrease diverse ownership. Of the only 48 full power commercial TV stations licensed to ethnic or racial minorities in the United States, 19, or nearly 40 percent, are non-top-4 ranked stations in a top 20 Nielsen Designated Market Area (“DMA”). Under the Commission’s proposed rule change, all 19 of these stations would become eligible for sale to newspapers in the same markets. It follows that relaxation of the NBCO would disproportionately affect these licensees.

We also urged the Commission to consider the impact of other contemporaneous policy changes, namely incentive auctions, in conjunction with the Quadrennial Review. The upcoming incentive auctions raise two concerns. First, stations owned by women and people of color would be most vulnerable to sale in the reverse auction, thereby reducing the number of diverse voices in the marketplace. Second, the auction process would serve to remove a key industry entry point — non-network affiliate stations. It follows that the pool of opportunities for would-be women and minority owners might shrink. Given the Commission’s stated commitment to promoting diverse ownership, it must take this factor into account in designing its broadcast ownership rules. Therefore, we urged the Commission to avoid compounding appallingly low levels of ownership diversity by relaxing these important protections.

Finally, we briefly reiterated our position on shared services agreements. We explained that licensees unable to merge under the FCC’s rules are using such arrangements to consolidate their core operations, and thereby circumvent local media ownership protections. As a result, the television duopoly rule has been effectively rendered meaningless and unenforceable. These practices subvert the purpose of the Commission’s media ownership limits by diminishing competition, localism, and journalistic independence, while raising consumer costs in local communities. Typically, these arrangements result in lay-offs of station staff and diminished competition for audiences, advertisers and retransmission consent. These arrangements also frequently result in the joint production and airing of identical local news content across purportedly “competing” broadcast outlets.

Pursuant to section 1.1206(b) of the Commission’s rules, this *ex parte* notice is being filed electronically in the above referenced dockets. If you have any questions regarding this filing, please do not hesitate to contact me.

Respectfully submitted,

_____/s/____

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cc: Dave Grimaldi
Alex Hoehn-Saric